

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 12, 2014

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2013AP735-CR

Cir. Ct. No. 2011CF1616

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-APPELLANT,

V.

JONATHAN J. REHDANTZ,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Dane County:
ROBERT DeCHAMBEAU, Reserve Judge. *Affirmed.*

Before Lundsten, Sherman and Kloppenburg, JJ.

¶1 PER CURIAM. The State appeals the circuit court's order excluding evidence that Jonathan Rehdantz had ingested methadone shortly before an accident that resulted in a charge of homicide by negligent operation of a vehicle. The State contends that the evidence is relevant to provide context and to

establish the element of criminal negligence, and that its probative value is not substantially outweighed by the danger of unfair prejudice. We conclude that the court properly exercised its discretion by excluding the evidence. We affirm.

¶2 In September 2011, the State charged Rehdantz with homicide by intoxicated use of a vehicle based on an accident in which Rehdantz fatally struck a pedestrian. In September 2012, the State amended the charge to homicide by negligent operation of a vehicle. At a status conference held December 7, 2012, the court set the deadline for the State to disclose its experts and expert reports as February 1, 2013.

¶3 On February 20, 2013, Rehdantz moved to prohibit the State from introducing any evidence at trial to show that Rehdantz had ingested methadone prior to the accident. Rehdantz argued that the State had not disclosed any experts or expert reports to establish a causal connection between use of methadone and impairment.

¶4 The court held a motion hearing on March 14, 2013. Rehdantz argued that both the State and defense experts had determined that, based on the time Rehdantz ingested methadone prior to the accident, the methadone would not have been absorbed in Rehdantz's bloodstream at the time the accident occurred. He argued that the State had no way to tie Rehdantz's use of methadone to the elements of negligent homicide, and thus the evidence was irrelevant.

¶5 The State argued that the methadone evidence was relevant to show criminal negligence. The State asserted that it would present an expert at trial to explain the potentially impairing effects of methadone. Rehdantz responded that the State had not previously disclosed any expert report as to the effects of methadone. The State said that it had disclosed the toxicology report showing that

Rehdantz had methadone in his system when his blood was drawn after the accident.

¶6 The court determined that, to introduce the methadone evidence, the State would need an expert to establish the connection between methadone use and impaired physical or cognitive ability to operate a vehicle. The court determined that the State had not shown that connection. The State sought to clarify whether an expert testifying to the effects of methadone would be sufficient, and Rehdantz again objected that the State had not disclosed an expert report on that issue. Rehdantz asserted that, if the court was going to allow the State to introduce that evidence, he would request a setover to review the report. The court declined that request and reiterated that the methadone evidence would be excluded. The court therefore entered an order prohibiting the State from introducing evidence related to Rehdantz's use of methadone prior to the accident. The State appeals.

¶7 We review a circuit court's evidentiary ruling for an erroneous exercise of discretion. *See State v. Hunt*, 2003 WI 81, ¶34, 263 Wis. 2d 1, 666 N.W.2d 771. We will uphold a circuit court's exercise of discretion if the court applied the proper legal standard to the facts and reached a reasonable determination, even if this court would have reached a different decision in the first instance. *See State v. Davidson*, 2000 WI 91, ¶53, 236 Wis. 2d 537, 613 N.W.2d 606.

¶8 The State contends that the circuit court erroneously exercised its discretion by excluding the methadone evidence because the evidence was relevant to provide context and to establish that Rehdantz acted with criminal

negligence. *See* WIS. STAT. § 904.01 (2011-12)¹ (evidence is relevant if it has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence”); *see also State v. Dukes*, 2007 WI App 175, ¶28, 303 Wis. 2d 208, 736 N.W.2d 515 (evidence is admissible “if it is part of the panorama of evidence needed to completely describe the crime that occurred and is thereby inextricably intertwined with the crime”). In support, the State cites *State v. Schutte*, 2006 WI App 135, 295 Wis. 2d 256, 720 N.W.2d 469, as requiring the court to admit the methadone evidence in this case. The State’s reliance on *Schutte*, however, is misplaced.

¶9 In *Schutte*, we upheld the circuit court’s evidentiary ruling to admit evidence that Schutte had ingested marijuana prior to an accident resulting in a charge of negligent homicide. The State contends that, as in *Schutte*, evidence that Rehdantz had ingested a substance capable of producing impairing effects “was a circumstance rendering it more probable that [his] conduct was criminally negligent.” *See id.*, ¶48. The State argues that it offered evidence as to methadone’s impairing effects by stating at the motion hearing that its expert would provide that testimony, and that an officer would testify as to his observations of Rehdantz at the scene of the accident.

¶10 Rehdantz responds that evidence that he had ingested methadone before the accident was irrelevant absent evidence showing that the methadone use was capable of impairing Rehdantz’s driving. Rehdantz contends that the State

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

disclosed only the toxicology report showing that there was methadone in his blood at the time of the blood draw following the accident, but never disclosed an expert report as to the effects of methadone. Rehdantz argues that *Schutte* is distinguishable because, there, the State established the connection between marijuana use and impaired driving. We agree with Rehdantz.

¶11 In *Schutte*, the circuit court admitted the marijuana evidence “after hearing the proposed testimony of an expert, who was the supervisor of the Toxicology Section of the Wisconsin State Laboratory of Hygiene.” *Id.*, ¶41. The circuit court there held that “the presence of an illegal controlled substance shows impairment, not to a specific degree, but some impairment. The decision whether or not to use a controlled substance and then drive certainly goes to the issue of negligence.” *Id.* We concluded that the circuit court properly exercised its discretion by admitting the marijuana evidence because evidence that Schutte had ingested marijuana, together with expert testimony that marijuana has negative effects on a person’s ability to drive safely, was relevant to whether Schutte had acted with criminal negligence. *See id.*, ¶¶47-49.

¶12 Here, while the State asserted at the motion hearing that it intended to offer evidence at trial to establish methadone’s effects on the ability to drive, the State did not offer that evidence at the motion hearing. The time to disclose expert witnesses and reports had passed, and the State did not obtain an extension of the time to do so.² Thus, while the State asserts that the methadone evidence

² In its reply brief, the State asserts that the circuit court did not rely on the State’s failure to disclose an expert report in determining that the evidence was not relevant. The State also points out that the circuit court has discretion whether to admit expert testimony despite a failure to timely disclose a witness, and asserts that the circuit court did not address this issue. As set forth above, however, the court did address the State’s failure to obtain an expert report. The

(continued)

was relevant to show that Rehdantz acted with an awareness of the risk he created by driving after ingesting methadone and to offer a complete picture of the alleged crime, the State presented no evidence to back up that assertion. We discern no basis to disturb the circuit court's exercise of discretion in excluding the methadone evidence as irrelevant based on the State's failure to establish any connection between methadone use and impaired driving.³

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

State has not persuaded us that the circuit court erroneously exercised its discretion in determining the methadone evidence was irrelevant based on the evidence before the court.

³ Because we do not disturb the circuit court's decision to exclude the methadone evidence as irrelevant, we do not address the parties' dispute as to whether the probative value of the evidence is outweighed by the danger of unfair prejudice.

